

SUBCOMMITTEE NO. 4

Agenda

Michael Machado, Chair
Tom Harman
Christine Kehoe



Hearing Outcomes

Note: Senate Harman was absent during the votes for items in this agenda. All 2 – 0 votes reflect the votes of Senator Machado and Senator Kehoe.

Agenda Part “C”

**Thursday, May 8, 2008
10:00 a.m. or upon adjournment of session
Room 112**

Consultant: Brian Annis

<u>Item</u>	<u>Department</u>	<u>Page</u>
Proposed Vote-Only Calendar		
1110	Board of Barbering and Cosmetology	1
1110	Dental Board of California	1
1110	Speech-Language Pathology and Audiology Board.....	1
1110	Board of Vocational Nursing and Psychiatric Technicians	1
1111	Bureau of Private Postsecondary Education.....	1
Discussion Items		
8500	Board of Chiropractic Examiners.....	3
1100	California Science Center.....	5
1730	Franchise Tax Board	8
8320	Public Employment Relations Board	9
2100	Department of Alcoholic Beverage Control	10
2150	Department of Financial Institutions	14
2740	Department of Motor Vehicles.....	15
Attachment: Bureau of State Audits – Audit of the Board of Chiropractic Examiners		21

Department Budgets Proposed for Vote Only

1110 & 1111 Regulatory Boards & Bureaus within the Department of Consumer Affairs that have Sunset Issues

Boards and Bureaus with sunset issues were left off the March 24 agenda with the intent that they would be heard at a subsequent hearing after related policy bills were enrolled. To date none of these policy bills are enrolled. The sunseting entities are the Board of Barbering and Cosmetology, the Dental Board of California, the Speech-Language Pathology and Audiology Board, the Board of Vocational Nursing and Psychiatric Technicians of the State of California, and the Bureau for Private Postsecondary Education. All of these Boards and Bureaus are fully supported by licensee fees and penalties – no General Fund revenues are received.

The Administration submitted an April Finance Letter to budget the four expiring Boards as Bureaus (Board of Barbering and Cosmetology, the Dental Board of California, the Speech-Language Pathology and Audiology Board, the Board of Vocational Nursing and Psychiatric Technicians), which is consistent with current law that moves the functions over to Bureaus upon sunset of the Boards. These Boards sunset on July 1, 2008. If policy bills are approved to “restore” the Boards, the earliest date of restoration would be January 1, 2009, because the Constitution prohibits urgency bills for this purpose. If the Boards are restored through chaptered legislation, the Administration indicates an executive-order “budget revision” would be issued to appropriately adjust the Budget consistent with the policy legislation.

The Bureau for Private Postsecondary Education was created by SB 45 (Ch 635, St of 2007), as the replacement entity for the Board of Private Postsecondary and Vocational Education, which sunset on July 1, 2007. However, SB 45 states that the Bureau shall not commence operations unless and until a statute is enacted that creates a new California Private Postsecondary Education Act that provides the functions and responsibilities of the Bureau. No legislation has been enrolled to date to create the new California Private Postsecondary Education Act. The Governor’s Budget includes placeholder funding and staffing for the Bureau and budget bill language that prohibits expenditure of funds if implementing legislation is not approved. On April 22, Assembly Subcommittee #4 reduced the Bureau budget to \$1,000 to put this issue into Conference Committee, with the intent to provide additional time for the policy issues to be resolved.

No concerns have been raised to Staff concerning budget changes for these entities. The following table indicates the proposed budgets and any associated Budget Change Proposals for these five Boards and Bureaus:

	Positions		Expenditures	
	2007-08	2008-09	2007-08	2008-09
Boards and Commissions - Organization Code 1110				
Board of Barbering and Cosmetology	86.4	94.9	\$17,653	\$18,726
	Augmentation of \$662,000 and 9.0 new positions to conduct statutorily-mandated inspections of the licensee population. (BCP 1110-05)			
Dental Board of California	63.5	64.4	\$12,901	\$12,787
	Shift of \$52,000 from operating expenses to personal services (no net expenditure change) and add 1.0 accounting tech position for increased workload. (BCP 1110-02L)			
Speech-Language Pathology and Audiology Board	5.0	5.0	\$926	\$814
	Shift of \$14,000 in operating expenses from interagency contract to temporary help (no net expenditure change) to move the cashiering duties in-house. (BCP 1110-16)			
Board of Vocational Nursing and Psychiatric Techs	48.5	48.5	\$8,542	\$9,047
	No budget changes proposals submitted.			
Bureaus, Programs, Divisions - Organization Code 1111				
Bureau for Private and Postsecondary Education	14.1	69.4	\$3,629	\$11,309
	Budgeted amount is “placeholder” pending implementing policy legislation. Note, 2007-08 resources are federal funds used to support a veteran’s program.			

Staff Recommendations: Approve these budgets, including the April Finance Letter.

Action: *Approved Staff Recommendation on a 2 – 0 vote.*

Department Budgets Proposed for Discussion

8500 Board of Chiropractic Examiners

The Board of Chiropractic Examiners (Board) licenses and regulates the chiropractic industry. The Board also sets educational standards for recognized chiropractic colleges, reviews complaints, and investigates possible violations of the Chiropractic Act.

The January Governor's Budget proposed expenditures of \$3.2 million (no General Fund) and 14.9 positions for the Board – an increase of \$1.2 million and 7.4 positions. However, the 2007 Budget Act cut the Board's budget by about half (about \$1.5 million). When the Legislature cut the Board's funding last year, it subsequently added an appropriation of the same amount to SB 801, a policy bill, which also made reforms at the Board. SB 801 was vetoed by the Governor. The Administration requested and received deficiency funding of \$383,000 in 2007-08 for one-time legal costs. Assembly Bill 450 (Ch 12, St of 2008) was signed by the Governor on April 29 and restores the \$1.5 million to the Board's 2007-08 budget and makes more modest reforms than those included in SB 801.

Issues for Discussion:

1. **BSA Audit of the Board.** The Bureau of State Audits (BSA) audited the Board and presented its findings in a March 2008 report (see the BSA summary of the audit in Attachment I at the end of this agenda). This audit raised some significant problems at the Board, many of which were known and discussed last year when SB 801 was deliberated. Of the highest concern, the audit found the Board took: *unreasonable amounts of time to refer complaint cases, including priority cases – those alleging sexual misconduct, gross negligence or incompetence, the use of drugs or alcohol when performing the duties of chiropractic, and insurance fraud – to the Office of the Attorney General for potential disciplinary actions against the licensees.*

Staff Comment: The Board generally concurred with the BSA findings and indicated that while the audit examined the period prior to March 2007, significant improvements have been made since then.

Assembly Reporting Language: The Assembly added budget bill language to require the Board to report to the Legislature by next March 1, on its progress in addressing the BSA recommendations, and on its performance data for complaints processed, cases investigated, legal actions filed, and timelines for disposition of complaints.

Staff Recommendation: Conform to the Assembly reporting language.

Action: Approved Staff Recommendation on a 2 – 0 vote.

2. **Board's Budget for 2008-09 (Governor's Budget & April Finance Letter).** As indicated on the prior page, the January Governor's Budget fully funds the "base" Board activities at \$3.2 million (special fund) and 14.9 positions. The April Finance Letter requests \$503,000 (special fund) and 4.0 new positions to provide an in-house investigation unit. In 2009-10 and ongoing, the funding for this purpose would increase to \$535,000 and the investigation unit would grow to 6 staff. This increase would allow the Board to proactively investigate violations of the Chiropractic Act, conduct onsite monitoring of probationers, and engage in random field inspections of licensees.

Detail on Investigation Unit Request: The Board currently contracts out investigative services to four private firms. The budget request indicates that the Board of Chiropractic Examiners is the only healing arts board that out-sources its regulatory investigations. Investigative methods, skills, and abilities vary significantly between each contractor, and the Board indicates that this leads to rework and unacceptable delays in complaint investigations. Aside from bringing investigative work in-house, the Board proposes to expand investigative work in several areas:

- Pre-conviction investigations: Currently, the Board receives arrest and court records, but waits until a conviction before taking enforcement action. The Board proposes to initiate investigations at arrest, which may result in an administrative hearing and sanction prior to the resolution of the criminal matter.
- Civil judgment investigations: Currently, the Board does not investigate a civil judgment against a chiropractor unless the victim submits a formal complaint. The Board proposes to initiate investigations of civil cases in which a chiropractor must pay over \$3,000, regardless of whether the victim files a complaint.
- Random field inspections: Currently, the Board's inspections are primarily complaint driven. The Board proposes to perform random inspections of approximately 10 percent of total licensees each year.
- Probation monitoring inspections: Currently, the Board has about 150 chiropractors on probation at any given time and requires probationers to submit quarterly reports and perform other tasks. The Board proposes to begin investigative visits to confirm compliance.

Staff Comments: The additional staff should increase consumer protection, which is the primary mission of the Board. The cost of the new positions would be funded from licensing fees and penalties paid by chiropractors.

Staff Recommendation: Approve the request.

Action: Approved request on a 2 – 0 vote.
--

1100 California Science Center

The California Science Center is an educational, scientific, and technological center located in Exposition Park, a 160-acre tract in south Los Angeles. The California African American Museum (CAAM), also included in the park, provides exhibitions and programs on the history, art, and culture of African Americans. In addition, the Office of the Park Manager is responsible for maintenance of the park, public safety, and parking facilities.

The Governor proposes expenditures of \$24.5 million (\$18.7 million General Fund) and 180.3 positions for the Science Center – a total increase of \$1.1 million (and a General Fund increase of \$1.1 million) and no net change in positions. This change is primarily due to two factors: (1) the year-two ramp-up of \$2.6 million for operations of the new Phase II Science Center Facility (pursuant to a multi-year Budget Change Proposal (BCP) adopted last year); and (2) an ongoing budget cut of \$1.7 million to help close the State's General Fund deficit which would result in cuts to both the Science Center facility and CAAM.

At the March 24 hearing, the Subcommittee approved the requested \$1.5 million budget reduction for the Science Center and the requested \$249,000 budget reduction for CAAM. The issues contained herein for the Science Center are those left open at the March 24 Subcommittee hearing and April Finance Letters.

(see next page for issues).

Discussion / Vote Issues**1. CAAM Facility Renovation and Expansion Project – Working Drawings (BCP).**

The Administration requests an augmentation of \$2.2 million (General Fund) in 2008-09 to complete working drawings for the renovating and expansion of the California African American Museum (CAAM) facility. The Administration requested and the Legislature approved \$2.3 million for preliminary plans in 2007-08. The total General Fund cost inclusive of construction is estimated at \$43.6 million, which is 67 percent of the total project cost of \$65.4 million – the CAAM Friends Foundation (Foundation) would contribute the remaining \$21.8 million (33 percent).

Administration Response: This issue was held open at the March 24 hearing and CAAM was asked to provide additional detail on their fundraising plans for the privately funded portion of this project. As of April 25, CAAM indicates the Foundation has raised \$639,000, or 55 percent of the Foundation's share of \$1.2 million for the preliminary plans. The preliminary plans are expected to be complete by December 2008, and the Foundation will have to raise another \$523,000 in the interim to fund its share of the cost. The Foundation's share of the working drawings is \$1.1 million. CAAM hopes to initiate work on the working drawings in January 2009. CAAM believes the Foundation will be able to meet their funding goals on a timeline consistent with the budget request.

Staff Comments: The Subcommittee has rejected several General Fund capital outlay requests this year. If the working drawing budget request is rejected, and the CAAM timelines holds, the project would be delayed 6 months or more (assuming funding is alternatively approved next year for the 2009-10 budget). Staff notes that completion of the preliminary plans could be delayed if the Foundation is unable to raise the additional \$523,000 needed by December. Additionally, any delay in raising the \$1.1 million for the working drawings could delay that project phase. The Assembly approved this budget request at their March 11 Subcommittee #4 hearing.

Staff Recommendation: Reject this request.

Action: Rejected request on a 2 – 0 vote.
--

<i>CAAM requested the following comments be added: CAAM notes that private fundraising is intricately linked to the timing of the State's advance pledge of its share of funding for the Working Drawings project. CAAM indicates that if the project is not included in the FY08-09 budget, continued fundraising for the Working Drawing phase cannot resume until July 2009 after State funds have been included in the adopted FY 2009-10 budget and actual work on that phase will be delayed until January 2010.</i>

2. **New Coliseum Lease (April Finance Letter).** The Administration requests an augmentation of \$365,000 (Exposition Park Improvement Fund) and an increase in reimbursement authority of \$158,000 (reimbursements from the city and county of Los Angeles) to conform the budget to a new lease agreement for the Los Angeles Coliseum. Certain maintenance expenditures previously paid by the Coliseum Commission will now be directly paid by the Office of Park Management (within the Science Center). This increase in expenditures is offset by an increase in annual revenue to the Exposition Park Improvement Fund from the new Coliseum lease. The new lease with the City of Los Angeles has a 49 year term and increases the annual lease payment from \$80,000 to \$1.1 million.

Background / Detail: In addition to the cost shifts, the proposal includes a net increase in maintenance activities of \$115,000 to begin some critical security and safety improvements. These include: begin repairs/replacement of security cameras and recorders (\$32,500); begin work to upgrade and relocate 24/7 emergency dispatch (\$25,000); begin to make critical repairs to security patrol vehicles (\$25,000); and begin repair of public restrooms (\$32,500). An expenditure increase of \$98,000 is also requested because the new maintenance vendor contract is \$439,000, versus the old contract of \$341,000. What is not addressed in the Finance Letter is the Administration's plans for the \$655,000 revenue gain from the new contract that is not requested for expenditure in 2008-09.

Staff Comment: The new Coliseum contract will provide an ongoing revenue benefit to the Science Center. The funds are deposited in the Exposition Park Improvement Fund, where statute directs expenditures to improvements to Exposition Park including, but not limited to, maintenance of existing parking and museum facilities. Since the General Fund budgeted for 2008-09 does include improvements to Exposition Park (for example \$1.9 million is budgeted for external consulting related to opening the new Phase II Science Center facility), the unspent \$655,000 could be directed to General Fund relief on a one-time basis in 2008-09. Technically, General Fund expenditures would fall by \$655,000 to be backfilled with the same amount from the special fund.

Staff Recommendation: Approve the Finance Letter, but on a one-time basis, use the additional \$655,000 in new special fund revenue to offset a new General Fund cut of the same amount.

Action: Approved Staff Recommendation on a 2 – 0 vote.

1730 Franchise Tax Board

The FTB's budget was heard on the April 7 and the following issue was left open:

Issue proposed for Discussion / Vote:

1. Tax Gap – Mandatory E-Pay for PIT Payments over \$20,000 (Part of BCP # 14)

The Governor requests 3 positions and \$161,000 (General Fund) to implement a mandatory electronic payment of estimated tax installments that exceed \$20,000 or tax liabilities of \$80,000 or more. This change would reduce deposit delays and increase the interest earnings of the State. The FTB indicates that 1.8 percent of taxpayers would be affected, but those taxpayers pay over 50 percent of PIT revenues. New Jersey, Massachusetts, and Illinois currently have mandatory electronic payment requirements. The General Fund revenue gain would be \$5.0 million in 2008-09 and \$10.0 million in 2009-10 and ongoing. Statutory change would be required to mandate E-Pay, but the Administration did not propose trailer bill language – instead indicating the amendments could be made through a policy bill. The Subcommittee held this issue open at the April 7 hearing and requested that the FTB provide more information on taxpayer payment options and draft statutory language.

Administration Response: The FTB did provide the additional information requested by the Subcommittee. Taxpayers can make payment via the internet, through E-File, or by phone with a credit card (a convenience fee would apply). FTB indicates AB 2755 (set for hearing in the Assembly Appropriations Committee on May 7) contains the statutory change the Administration supports. One issue of note is that AB 2755 includes a 10 percent penalty for those that do not E-Pay. The FTB indicates that a phone-in payment system could be implemented with either a live operator (about \$25,000 to \$50,000 onetime) or an automated system (about \$50,000 to \$100,000 onetime). The disadvantage of the live operator is decreased security from an expanded number of individuals having access to bank routing numbers, and the disadvantage of the automated system is the time it would take to modify the information technology phone application.

Staff Comment: A 1.0 percent penalty level (more analogous to a credit card convenience fee) might be sufficient. It may be appropriate to adopt placeholder trailer bill language to make statutory change within the budget process, since the related General Fund revenue of \$5 million is scored in the budget.

Staff Recommendation: Approve the request, and additionally adopt *placeholder* trailer bill language that (1) sets the penalty for not complying with E-Pay at 1 percent and (2) adds an automated phone payment requirement (with the costs to be absorbed). (So the revenue gain is not lost during phone payment implementation, do not link implementation of E-Pay to implementation of automated phone pay.)

Action: Approved Staff Recommendation on a 2 – 0 vote.

8320 Public Employment Relations Board

The Public Employment Relations Board (PERB) is responsible for administering and enforcing California's public-sector collective bargaining laws and to assist employers and employees in resolving their labor relations disputes.

The Governor proposes expenditures of \$6.1 million (primarily General Fund) and 44.0 positions for the Board – a decrease of \$166,000 (General Fund) and no net change in positions.

Issues proposed for Discussion / Vote:

1. **BCPs and Budget Reductions (BCP #1 & 3, Budget Reductions).** The BCPs requests \$200,000 (General Fund) for 3.0 new positions (2.0 legal support and one human resources support) and then the budget reduction plan saves \$200,000 by not adding these positions. The budget reduction plan also saves an additional \$310,000 by: (1) eliminating fact-finding contracts (\$85,000 and trailer bill language is required); (2) by closing the Oakland Regional Office (\$140,000); and (3) by reducing travel, library purchases, and other operating expenses (\$85,000).

Background / Detail: Since there is no net change in staffing, the Subcommittee may want to focus on the elimination of fact-finding funding and the closure of a PERB regional office:

- Eliminate State Payments to Factfinders: Factfinders are contracted to assist in closing factual disputes between public sector employers and employees during labor negotiations. Current statute requires PERB to fund factfinder contracts, and PERB currently is budgeted at \$85,000 for this purpose. The Administration proposes to amend statute to eliminate the state obligation and instead specify that the cost be equally split between the two negotiating parties. The current daily payment to factfinders is \$800.
- Close Oakland Regional Office: The Administration proposes to save \$140,000 by closing the Oakland Regional Office on January 1, 2009 (full year savings is identified at \$280,000). The existing eight staff in Oakland would either relocate or telecommute to Sacramento. Over 25 percent of informal settlement conferences (or about 100 per year) take place in the Oakland office. There are approximately 1,233 public-sector employers and their employees that are serviced by the Oakland Office.

Staff Comment: Due to the large proportion of workload handled by the Oakland Office, it is unclear that closure of the office would be a long-term efficiency for the State. The Assembly Subcommittee rejected the closure of the Oakland Office.

Staff Recommendation: Approve the requested budget, and budget reductions, except reject the closure of the Oakland Office (restore \$140,000 of the reduction).

Action: Approved Staff Recommendation on a 2 – 0 vote.

2100 Department of Alcoholic Beverage Control

The Department of Alcoholic Beverage Control (ABC) administers the provisions of the Alcoholic Beverage Control Act, which vests in the Department the exclusive right and power to license and regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages within the state and, subject to certain laws of the United States, to regulate the importation and exportation of alcoholic beverages into and from the state.

The January Governor's Budget proposes total expenditures of \$56.1 million (no General Fund) and 459.2 positions, – a decrease of \$1.5 million and no change in positions. This change includes two large adjustments: (1) the Department received a one-time Office of Traffic Safety grant of \$1.5 million in 2007-08 that is not included in 2008-09, and (2) the budget reduces local grants from \$3.0 million to \$2.0 million. Additionally, the Administration proposes a fee increase of 3.28 percent tied to the Consumer Price Index.

Issues proposed for Discussion / Vote:

1. **Corrections to the Governor's Budget Display (Informational).** At the March 24 hearing, ABC indicated that there were errors in the fund condition statement included in the Governor's Budget. The Department of Finance also indicated irregularities in ABC's processing and disbursement of prior year's federal grants. The Department of Finance has asked the Office of State Audits and Evaluations (OSAE) to perform an audit of ABC's administration of its grant and local assistance programs.

Administration Response: The Subcommittee held all ABC budget requests open pending correction of any errors in the Governor's Budget. The Department has since provided staff an amended fund condition statement that indicates that the balance of the Alcoholic Beverage Control Fund is overstated by \$819,000 in 2006-07, and overstated by \$219,000 in 2007-08. The Department of Finance indicates that the reason for the discrepancy is that ABC inaccurately reported expenditure in a past year. Finance indicates it will add this issue to the aforementioned OSAE review of ABC accounting.

Staff Comment: Another issue discussed at the prior hearing was whether the reported budget savings of \$1.8 million in 2006-07 was attributable to vacancies or expenditure delays for an information technology (IT) project. The department reports that \$1.5 million was attributable to the IT project and the remainder of \$300,000 was other savings.

Staff Recommendation: Direct staff to review the OSAE audit when complete and report the results to the Subcommittee next year as warranted.

Action: *Directed staff to review OSAE audit and bring this issue back to the Subcommittee next year as warranted.*

- 2. Licensing and Compliance System Information Technology (IT) Project (Finance Letter #1).** The Finance Letter would revert \$1.1 million in the current year and augment the budget year by \$1.1 million (for zero net change in expenditures over the two years). The Licensing and Compliance System IT project was originally approved by the Legislature in 2004-05, and will update the ABC's existing automated process for accepting and processing liquor license applications. The project was delayed as a result of civil litigation filed by a vendor after the initial bid process.

Staff Comment: With this request, a total of \$2.3 million would be budgeted for the IT project in 2008-09; however, the Special Project Report (SPR) indicates that only \$1.1 million is planned for project expenditures. Accordingly, the Subcommittee may want to conform the budget to the SPR by approving the April FL, but reducing the budget by \$1.211 million to match the SPR.

Staff Recommendation: Approve the request, but also reduce the ABC budget by \$1.211 million to conform to the SPR.

<i>Action: Approved Staff Recommendation on a 2 – 0 vote.</i>
--

- 3. Fee Increase and Reduction to Local Assistance (BCP #2).** The Administration requests approval of a 3.28 percent fee increase. AB 1298 (Ch 488, St of 2001) increased ABC fees over a three-year period and authorized annual Consumer Price Index (CPI) fee increases effective January 1, 2005, via the budget process. However, ABC has not requested a CPI increase until this year. To further reduce the gap between revenues and expenditures, a reduction of \$1.0 million (from \$3.0 million to \$2.0 million) is proposed for grants to local law enforcement for programs that reduce underage drinking and increase the enforcement of liquor laws.

Background / Detail: The Department indicates that revenue grows about two percent each year from growth in the licensee population; however, the Department's costs have increased at a faster rate, and again, fees have not increased since January 2004. As cost drivers, the Department cites: unanticipated increases in personal services associated with the Bargaining Unit 7 contract; routine increased general operating expense; and increased funding for local grants in 2006-07 and ongoing (grants increased from \$1.5 million to \$3.0 million annually). Staffing has been relatively unchanged (plus 3.0 positions) over this period.

Fee Increase: A single-year CPI increase might be expected to increase revenues by about \$1.1 million at current inflation rates. Because the current structural deficit is about \$4.0 million, it will likely take several years of CPI increases to close the gap, and a shrinking fund balance may require that a catch-up (or double) CPI increase be made in some year to compensate for the four year period without a fee increase. Under the assumptions of continuing baseline expenditures, annual CPI increases starting January 1, 2009, and no employee raises over the three years, the fund balance would be \$5.5 million at the end of 2008-09, \$2.5 million at the end of 2009-10, and about \$1.1 million at the end of 2010-11.

Local Assistance Program: The Grant Assistance Program (GAP) provides grants to expand local law enforcement for programs that reduce underage drinking and increase the enforcement of liquor laws. The Administration indicates that the reduction from \$3 million to \$2 million is not necessarily permanent, depending on the health of the fund balance in 2009-10 and beyond.

Staff Comment: The proposed CPI increase seems justified. It seems likely a catch-up or double CPI increase might be necessary at some point, dependent on collective bargaining and other factors. Given the expenditure savings associated with delays in the IT project (see issue #2 above), the Subcommittee may want to direct \$1.0 million of that savings to restore the local grants to the base level of \$3.0 million.

Staff Recommendation: Approve the requested CPI fee increase and redirect the expenditure savings from the delayed IT project to restore the local assistance program to the base level of \$3.0 million.

Action: Approved Staff Recommendation on a 2 – 0 vote.

- 4. Information Technology (IT) Infrastructure Replacement (BCP #1).** The Governor proposes a one-time augmentation of \$231,000 (special fund) to replace about 15 percent of the Department's computers (\$141,000), to hire an IT Security Consultant (\$80,000), and to provide related training (\$10,000).

Background / Detail: The Department indicates that several of its computers are failing and that without replacement, support costs and employee output could suffer.

Staff Comment: As a special fund department, ABC is not subject to the 10 percent budget reductions proposed by the Administration for General Fund departments. While not a General Fund department, ABC has a structural deficit as indicted in the prior issue. Given the general Subcommittee direction to defer non-critical administrative augmentations at special fund departments, the Subcommittee may want to reject this request and allow ABC to absorb the costs of these expenditures in its base budget – to the extent they cannot be deferred.

Staff Recommendation: Reject the request.

Action: <i>Rejected request on a 2 – 0 vote.</i>

2150 Department of Financial Institutions

The Department of Financial Institutions (DFI) was established effective July 1, 1997, to regulate depository institutions, including commercial banks, savings associations, credit unions, industrial loan companies, and certain other providers of financial services. In addition, the Department licenses and regulates issuers of payment instruments, including companies licensed to sell money orders and/or travelers' checks or licensed to engage in the business of transmitting money abroad, and business and industrial development corporations. Programs are supported by assessments of the various industries, license and application fees, and charges for various other services.

The January Governor's Budget proposed total expenditures of \$32.5 million (no General Fund) and 241.2 positions - an increase of \$3.5 million and 18.0 positions. The Governor's budget for DFI was approved at the March 24 hearing and the issue that follows is an April 1, Finance Letter request.

Issues proposed for Discussion / Vote:

1. **Money Transmitter Program - New Staff (April Finance Letter).** The Governor proposes a budget augmentation of \$1.0 million and 9.0 positions to address workload growth in the Money Transmitter Program. The Department indicates that there has been tremendous growth in the transmitter industry, an increase in the number of poorly rated licensees, and new workload related to anti-money laundering and terrorist financing regulations.

Background / Detail: The DFI has base staffing of 9.0 examiners and 2.0 managerial employees. This proposal would add 7.0 examiners and 2.0 managerial employees. The Money Transmitters Program is the smallest of DFI's programs; however, the combined total assets of money transmitter licensees (\$392 billion) exceeded combined total assets of California banks (\$226 billion) and California credit unions (\$69 million). Unlike banks and credit unions, deposits held by money transmitters are not insured by the FDIC. There are 69 money transmitters licensed in California, although they operate through a network of 13,800 agents at over 22,479 locations. Currently 41 percent of licensees are rated as "problem licensees," triggering more frequent visits. The volume of money transmitted to foreign countries from California has increased from \$3.9 billion in 2000 to \$13.1 billion in 2006.

Staff Comment: The Department has done a zero-based analysis of workload to develop the staffing request. While the department has supplemented staff in the last few years with three retired annuitants, the analysis assumes DFI will discontinue this practice.

Staff Recommendation: Approve this budget request.

Action: Approved request on a 2 – 0 vote.
--

2740 Department of Motor Vehicles

The Department of Motor Vehicles (DMV) regulates the issuance and retention of driver licenses and provides various revenue collection services. The DMV also issues licenses and regulates occupations and businesses related to the instruction of drivers, as well as the manufacture, transport, sale, and disposal of vehicles.

The January Governor's Budget proposed total expenditures of \$958.3 million (no General Fund) and 8,249.2 positions, an increase of \$18.7 million and a decrease of 39.4 positions. The issues herein are those left open at the March 24 and subsequent Finance Letters.

Issue for Vote Only:

1. Facilities Issues – (April 1 & May 1 Finance Letters). The Administration requests various budget augmentations and reductions related to facilities projects. The specific projects are as follows:

- **One-time Lease Savings (April FL #5):** The Administration requests a budget reversion of \$5.0 million in 2007-08 and a budget reduction of \$3.5 million in 2008-09 (various special funds) to reflect the savings that have resulted by the delay in occupying various leased facilities approved in the 2007 Budget Act. The revised schedule assumes occupancy of the Oxnard and Redding Driver Safety Offices and the Bakersfield and Vallejo Business Service Centers starting January 1, 2009. The Metropolitan Los Angeles Business Service Center and consolidated southern California Telephone Service Center will be occupied in May 2009.
- **New Build-to-Suit-with-Purchase-Option Lease (April FL #3):** The Administration requests a \$2.3 million in 2008-09, \$1.2 million in 2009-10, and \$1.6 million in 2010-11 and ongoing to construct a new facility at an existing DMV-owned property in Rancho Cucamonga. The DMV-owned property was vacated in 2000 due to mold damage that could not be satisfactorily repaired. DMV has since leased a different facility; however, the lessor is unwilling to extend the lease. The proposal is to enter into a lease/lease-back contract with a purchase option in year 10. The FL indicates this proposal is consistent with SB 754 (Ch 681, St 2007, Kehoe) that allows the DMV to pursue innovative financing for replacement of this office and two other specified offices.
- **Reappropriation for Office Reconfiguration (May FLs):** The Administration requests a reappropriation of \$704,000 in funds originally appropriated in the 2007 Budget Act. The reappropriation is requested due to project delays – the nature of the projects has not changed. The funds would support the working-drawings phase of office reconfigurations in three field offices: Victorville, San Bernardino, and Redding.

According to the 2008 California Infrastructure Plan, DMV occupies 98 state-owned facilities, 117 leased facilities, and shares an additional 12 facilities with other state agencies.

- 2. AB 462 Implementation (BCP #5a).** The Administration requests \$96,000 (special funds) in one-time funding to implement AB 462 (Ch 497, St. of 2007). Assembly Bill 462 authorized the owner of a passenger vehicle, 1969 model or older, to utilize previously-issued California license plates that correspond to the model year of the vehicle, and increased the application fee to \$45.00. The requested augmentation would fund consultant costs and data center costs for information-technology programming modifications.

Staff Comment: This issue was held open at the March 24 hearing and the Subcommittee asked the DMV to provide estimates of the new revenue that would be associated with AB 462. The DMV indicates that the new revenue gain would be about \$13,500 annually. The implementation cost of AB 462 is \$96,000 one-time, so the cost of implementing the legislation will be fully covered by new revenue over a seven-year period.

Staff Recommendation on DMV Vote-Only Calendar: Approved these requests.

Action: <i>Approved requests on a 2 – 0 vote.</i>
--

Issues Proposed for Discussion / Vote:

3. **Motor Vehicle Account – Fee Increase (Governor’s Budget).** The Administration proposes trailer bill language to increase the car registration fee by \$11 dollars per year and increase late fees. This is proposed to eliminate the operating deficit in the Motor Vehicle Account (MVA) and keep the fund solvent. The base car registration fee (including a California Highway Patrol (CHP) fee) is \$41 per vehicle – so the proposed increase would result in a new annual base fee of \$52. The Administration indicates that this fee level will increase revenues by \$385 million in 2008-09 (with an October 2008 effective date) and about \$522 million in 2009-10 and thereafter.

Background / Detail: The MVA derives most of its revenues from vehicle registration and driver license fees. In 2007-08, those fees accounted for 90 percent of the estimated \$2.1 billion in MVA revenues. The majority of MVA expenditures support the activities of the CHP (69 percent), the DMV (22 percent) and the Air Resources Board (7 percent). While increases in the number of cars, license holders, and other factors, have increased MVA revenues about five percent annually, expenditures have grown at a faster rate. The CHP’s budget, for example, has grown at a rate of about nine percent annually. Some specific costs drivers are outlined in the bullets below:

- The number of CHP Officers has increased and a CHP Officers’ contract tied salaries to those of local law enforcement resulting in above-average salary increases – in 2002-03 there were 7,237 Officers at a cost of about \$540 million and in 2007-08 there are 7,617 Officers at a cost of about \$750 million.
- The CHP began a radio replacement project in 2006-07 that will cost about \$500 million to implement.
- The DMV is implementing several large information technology projects with a combined cost of about \$334 million.
- Various programs at the Air Resources Board have expanded, increasing MVA expenditures from \$62 million in 2002-03 to \$120 million in 2007-08. (Note: there was a \$15.2 million loan from the MVA to the Air Pollution Control Fund in 2007-08 for AB 32 implementation, but there is no ongoing MVA funding for AB 32 implementation.)

An operating deficit has developed over the past few years and 2007-08 reflects revenues of \$2.1 billion and expenditures of \$2.4 billion. Without correct action, the MVA will become insolvent in 2008-09. Out-year pressure on expenditures may come from additional growth in the number of CHP Officers, possible expenditures to implement the Real ID Act, and risk from cost escalation of existing radio and information technology projects.

LAO Comments: In the *Analysis of the 2008-09 Budget Bill*, the Legislative Analyst indicates that the Administration's calculations overstate the revenue gain by about \$32 million annually, and additionally there is risk to the assumption that doubling the late fee penalty (from the current range of \$10 to \$100 to the new range of \$20 to \$200), will not reduce the number of late payments and therefore reduce the revenue benefit. The LAO believes the proposed fee increases would sustain the MVA through 2013-14 (assuming historical expenditure trends). The LAO cites additional short-term risk from a late budget, with every month's delay eroding the revenue benefit in 2008-09 by \$29 million.

Staff Comment: This issue was heard at the March 24 hearing and held open for further review and discussion.

Staff Recommendation: Approve this request.

Action: <i>Approved request on a 2 – 0 vote.</i>

- 4. Federal REAL ID Act.** On May 11, 2005, President Bush signed H.R. 1268, which includes the Real ID Act of 2005. In 2006, the DMV estimated implementation of Real ID would cost the State \$500 million to \$750 million. Final regulations from the federal government on the implementation of Real ID were released on January 11, 2008. At the March 24 hearing, the Subcommittee asked the DMV to update their detailed assessment of the impacts of Real ID and provide a report to the Legislature. The DMV has complied with this request, and estimates the final regulations have reduced implementation costs to about one-half of the 2006 figures. A primary driver of the lower cost estimate is the extended implementation period – about 10 years for full implementation.

DMV 2008 Real ID Assessment: As requested by the Subcommittee, the report updates the information provided in the 2006 report. Included is:

- A review of Real ID Final Regulations;
- An assessment of California policy considerations;
- A cost summary;
- Comparative information on other states;
- Correspondence between the DMV and the federal government;
- Current California legislation under consideration;
- and, the text of the Real ID Act and Final Regulations.

This update should be useful to the Subcommittee, policy committees, and other interested parties. On the fiscal side, the updated cost estimate for California implementation of Real ID is now estimated to be in the range of \$270 million to \$300 million (versus the prior estimate of around \$500 million). As indicated at the prior hearing, there is no significant federal funding currently available for this purpose.

Staff Comment: Issues related to Real ID were discussed at the March 24 hearing and public testimony was received. The Subcommittee may want to hear from DMV briefly on the revised cost estimates, which represent new information since the last hearing. There are no DMV budget proposals related to Real ID for 2008-09, and the DMV has indicated no budget or policy proposals from the Administration are expected until next year.

Staff Recommendation: No action - informational only.

Action: No action – informational issue.

- 5. Vehicle Registration Financial Responsibility (April FL # 1).** The Governor requests \$3.9 million and 10 positions in 2008-09 and \$17.5 million and 136 positions in 2009-10 to continue to meet the requirements of SB 1500 (Ch 920, St 2004, Speier) and develop an in-house information technology (IT) solution to replace a vendor owned and operated interim solution. SB 1500 requires auto insurers to report to the DMV within 45 days of the effective date of a policy cancellation, and requires DMV to suspend the vehicle registration if coverage is not reinitiated.

Background / Detail: SB 1500 should reduce the number of uninsured drivers, because prior to SB 1500, some car owners would obtain insurance, register their vehicle, and then cancel their insurance for the remaining 11 months of the year. The advocates for SB 1500 suggested it would produce major General Fund savings by reducing Medi-Cal costs related to auto accidents caused by uninsured drivers. Since implementation, 11.6 million vehicles were reported with insurance changes, 5.0 million warning letter were sent, and 2.6 million vehicle registrations were suspended. The program has a revenue component of a \$14 reinstatement fee for individuals who improperly cancel auto insurance – trends suggest revenue from this fee should exceed \$6 million in 2007-08.

In 2006, DMV submitted a request for a \$64 million information technology project to implement SB 1500 and indicated the statutory implementation date would be delayed. The Legislature rejected the delayed implementation and instead directed DMV to contract out the function on an interim basis to speed implementation. A three-year contract was signed at an original cost of \$44.8 million and SB 1500 was implemented in October 2006. The 2007 Budget Act increased annual funding by \$9.4 million because the number of vehicles impacted by the suspension program was much larger than originally anticipated.

DMV now indicates that implementing the in-house information technology solution will be significantly less expensive than estimated two years ago. The recommended solution here has one-time costs of \$5.5 million, continuing IT costs of \$7.4 million and continuing staffing/program costs of \$13.1 million.

Staff Comment: Moving the function in-house is consistent with legislative intent from two years ago. While the DMV is not transferring over the software of the current vendor, the system they propose to develop will be better integrated with their data and web infrastructure. In a year or two, when revenue and cost data is more established, the Legislature might want to reexamine the level of the reinstatement fee to see if this program can be made to be self supporting (i.e. if those who cancel insurance and continue driving, can fund the DMV cost of policing this practice).

Staff Recommendation: Approve the request.

Action: Approved request on a 2 – 0 vote.
--

Attachment I: BSA Audit of the Board of Chiropractic Examiners

California State Auditor/Bureau of State Audits
Summary of Report 2007-117 - March 2008

State Board of Chiropractic Examiners:

Board Members Violated State Laws and Procedural Requirements, and Its Enforcement, Licensing, and Continuing Education Programs Need Improvement

AUDIT HIGHLIGHTS

Our review of the State Board of Chiropractic Examiners' (chiropractic board) enforcement, licensing, and continuing education programs and the role and actions of the chiropractic board members revealed the following:

- Board members' lack of understanding about state laws related to their responsibilities as board members, including the Bagley-Keene Open Meeting Act, resulted in some violations of state law and other inappropriate actions.*
- The chiropractic board did not ensure that its designated employees, including board members, complied with the reporting requirements of the Political Reform Act of 1974.*
- Board members inappropriately delegated responsibility to approve or deny licenses to chiropractic board staff.*
- The chiropractic board has not developed comprehensive procedures, such as the length of time it should take to process complaints and, as a result, staff do not always process complaints promptly.*
- The board's weak management of its enforcement program may have contributed to inconsistent treatment of complaints as well as unreasonable delays in processing.*
- The chiropractic board does not ensure that staff process priority complaints promptly. Of 11 priority complaints we reviewed staff took from one to three years to process nine of them.*
- Although the chiropractic board's regulations require that it establish chiropractic quality review panels, it has never complied with its regulation.*
- The chiropractic board has insufficient control over its licensing and continuing education programs.*

RESULTS IN BRIEF

The State Board of Chiropractic Examiners (chiropractic board) was created in December 1922 through the Chiropractic Initiative Act of California (initiative act). The initiative act prescribes the terms of issuing licenses to chiropractors, specifies the penalties to impose against licensees who violate those terms, and declares the powers and duties of the chiropractic board. In general, the board is a policy-making and administrative review body with the primary responsibility of protecting California consumers against fraudulent, negligent, or incompetent chiropractic practices.

A lack of understanding among members of the chiropractic board (board members) about state laws related to their responsibilities—including the Bagley-Keene Open Meeting Act (Bagley-Keene), the state law that prescribes open-meeting requirements for all state boards and commissions—resulted in some violations of state law and other inappropriate actions. Problems were also caused by the board's inadequate policies and procedures, such as the lack of documentation to support decisions made in each of the three board programs we reviewed: enforcement, licensing, and continuing education.

In one glaringly inappropriate instance, board members did not provide required written notice to the former executive officer, fired her during a closed-session meeting, and then failed to disclose the action when reconvening the public meeting. Board members remedied these significant errors at a subsequent meeting.

The Political Reform Act of 1974 (political reform act) requires state officials and employees with decision-making authority to disclose certain financial interests by filing statements of economic interests annually and on assuming or leaving a designated position. The chiropractic board did not ensure that designated employees complied with these reporting requirements. Among the 12 board members serving in 2005, 2006, and 2007, and the four employees whose statements of economic interests we reviewed, eight did not correctly complete statements of economic interests, nine filed statements late, and two did not file statements. Finally, the chiropractic board did not require all board employees making decisions on enforcement cases to file statements of economic interests.

The chiropractic board has taken actions, such as adopting an administrative manual in October 2007 and including an agenda item at many board meetings for its legal counsel to provide training or answer questions board members might have related to Bagley-Keene. We believe the new administrative manual and continued ongoing training could assist board members to further improve in executing their board responsibilities.

Board members also inappropriately delegated the responsibility to approve or deny licenses to chiropractic board staff (staff). Because staff rather than board members made final decisions on approving licenses and board members did not review staff-determined denials when applicants did not formally appeal those denials, the chiropractic board did not comply with the initiative act. According to our legal counsel, provisions of the initiative act clearly establish voter intent that the power to issue and deny licenses must be exercised by board members, and the act has no provisions that allow the chiropractic board to delegate this task to its staff. Our legal counsel has advised us that board members could easily remedy this noncompliance by ratifying all licenses approved or denied by staff, thus making board members responsible for those approvals and denials.

Additionally, the chiropractic board has not developed comprehensive procedures. For example, staff have no guidelines on the length of time they should take to process complaints; thus, staff do not always process complaints promptly. Our review of 25 complaints that the chiropractic board's database indicated were closed in fiscal year 2006–07 revealed that the chiropractic board sometimes took excessive amounts of time to resolve complaints and allowed unexplained and unreasonable delays between phases of the complaint review process. Further, the board's weak management of its enforcement program may have contributed to inconsistent treatment of complaints as well as unreasonable delays in processing them. Chiropractic board management (management) did not adequately supervise enforcement staff and their decisions on cases. We found instances when staff processed similar types of complaints differently. Further, staff took unreasonable amounts of time to refer complaint cases, including priority cases—those alleging sexual misconduct, gross negligence or incompetence, the use of drugs or alcohol when performing the duties of chiropractic, and insurance fraud—to the Office of the Attorney General for potential disciplinary actions against the licensees.

The chiropractic board's inadequate policies and procedures resulted in insufficient guidance for staff processing complaints. For example, the board has not established adequate procedures to ensure that only designated employees—staff required to file annual statements of economic interests—make final decisions on complaint cases or that management, who are designated employees, review staff decisions. The chiropractic board also has not established adequate procedures instructing staff on when it is appropriate to open an internally generated complaint. Additionally, the board has not established procedures requiring staff to clearly document their actions and decisions.

Further, the chiropractic board has not yet developed procedures to ensure that staff process priority cases promptly. Staff took more than one year to investigate and close five of the 11 priority complaints we reviewed; they took more than two years to process three and more than three years to close another. Also, staff did not consistently assign priority to certain types of complaints, and management did not monitor the status of open complaints on a regular basis.

The chiropractic board's regulations require that it establish chiropractic quality review panels (review panels). Although this has been a regulation since 1993, changes in executive officers and board members over the years resulted in changes in priorities and efforts to implement the review panels, and the board has never complied with its regulation.

The chiropractic board has insufficient control over its licensing and continuing education programs. It has not established timelines for processing some of its applications for licenses, certificates, and referral services. The board also could not always show whether it verified the status of chiropractors' licenses before approving applications and certificates. Additionally, many of the chiropractic board's current practices for administering its continuing education program are not consistent with its regulations and written policies and procedures. For example, it did not always follow regulations requiring board members to approve or deny the applications submitted by providers of continuing education. To further complicate an understanding of the process used, staff did not always retain appropriate documentation to demonstrate compliance with regulations, policies, and procedures.

RECOMMENDATIONS

To comply with Bagley-Keene, the chiropractic board should continue involving legal counsel to provide information and training to board members at each meeting.

To comply with the initiative act, the chiropractic board should modify its current process so that board members make the final decision to approve or deny all licenses. Additionally, board members should ratify all previous license decisions made by staff.

To comply with the political reform act, the chiropractic board should do the following:

- Establish an effective process for tracking whether all designated employees, including board members, have completed and filed their statements of economic interests on time, thereby identifying potential conflicts of interest.
- Periodically review its employees' responsibilities to ensure that all individuals who are in decision-making positions are listed as designated employees in its conflict-of-interest code.

To continue improving their knowledge and understanding of state laws and chiropractic board procedures, board members should consistently use their newly adopted administrative manual as guidance for conducting board business.

To adequately control its complaint review process, the chiropractic board should do the following:

- Develop procedures to ensure that staff process and resolve complaints as promptly as possible by establishing benchmarks and more structured policies and procedures specific to each step in its complaint review process.
- Establish time frames for staff to open a complaint case, complete an initial review, refer the cases to a contracted investigator or expert if necessary, and close or otherwise resolve the complaint by implementing informal discipline or referring for formal discipline to ensure that all complaint cases move expeditiously through each phase of the complaint review process.

To ensure that its enforcement procedures are complete and to provide adequate guidance to enforcement staff, the chiropractic board should develop procedures instructing staff when to open and how to process complaints generated internally.

To consistently process and resolve consumer complaints regarding the same types of allegations, the chiropractic board should strengthen its existing procedures to provide guidance for staff on how to process and resolve all types of complaints and to ensure appropriate management oversight.

To process all priority complaints promptly, the chiropractic board should establish a process to clearly identify all priority complaints. In addition, management should ensure that it monitors the status of open complaints regularly, especially those given priority status, to ensure that they do not remain unresolved longer than necessary.

To comply with all its regulations, the chiropractic board should carefully consider the intended purpose of the quality review panels and whether implementing them is the best option to fulfill that intent. If the chiropractic

board decides that another option would better accomplish the intended purpose of the review panels, it should implement the process for revising its regulations.

To measure the overall efficiency of its licensing program in processing applications and petitions, the chiropractic board should establish time frames for all the types of applications and petitions it processes.

To defend its decisions on approved applications for satellite offices, corporations, and referral services, the chiropractic board should implement a standard of required documentation that includes identifying when and who conducted eligibility verifications.

To ensure that its continuing education program complies with current regulations, the chiropractic board should do the following:

- Require board members to ratify staff approvals of continuing education providers.
- Ensure that its process to approve continuing education providers conforms to its regulations.

AGENCY COMMENTS

The chiropractic board agrees with nearly all of our recommendations and states that it has already implemented most of them, and that with the restoration of its funding, the board plans to meet or exceed the recommendations. However, the chiropractic board disagrees with our recommendation that board members must vote to deny the issuance of a license and that it should fill its chiropractic consultant position. Finally, the chiropractic board states that it is committed to improving its governance, enforcement, licensing, and continuing education functions.